No. 12,288

IN THE

United States Court of Appeals
For the Ninth Circuit

Kaj Theill and Raymonde M. Theill,
Appellants,
vs.
Charles S. Whitlock,
Appellee.

APPELLEE'S REPLY BRIEF.

Allison E. Schofield,
Raymond L. Hanson,
Brunswig Sholars,
Schofield, Hanson & Sholars,
1704 Central Tower, San Francisco 3, California,
Attorneys for Appellee.

Walter S. Stevenson,
1109 De Young Building, San Francisco 4, California,
Thomas M. Jenkins,
1704 Central Tower, San Francisco 3, California,
Of Counsel.

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Table of Authorities Cited

Cases

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APPELLEE'S REPLY BRIEF.

I.

The appellee does not subscribe to the third paragraph of page 2 of appellants' brief. The definition of the word "overcharge" is not comprehensive.

It is appellee's contention that the findings of fact, made up of five items as follows:

"1. The difference between $827.50 rent actually paid and $730.00 (365 days at $2.00 per day) the allowable rent fixed as alleged in paragraph 5 of the complaint (Transcript of Record page 3) constitutes one item of overcharge in the sum of $97.50. The four items amounting to $207.00 is the cost to appellee of furnishing himself with these items required to be furnished him by appellants, pursuant to appellants' registration certificate,'' are adequate. ($207.00 + 97.50 = $304.50.)

II.

The appellants' brief, page 3, makes the statement: ''By some *inexplicable reasoning* the Court granted damages in the sum of $304.50 and attorneys' fees in the sum of $125.00.'' (Emphasis added.)

The ''findings'' explain the matter fully in these words: ''The jurisdiction of this Court is confined to that period of tenancy prior to the first day of July, 1947,'' that the remedy of the plaintiff, if any, for the period beginning July 1, 1947, is vested in the Director of the San Francisco Bay Defense Rental Area. (Transcript page 16.)

The trial Court found further that the plaintiff was a tenant of the defendants etc. for the period alleged in the complaint. (Transcript pages 15-16.) (Complaint paragraph VI, Transcript page 4.)

III.

The plaintiff, at the trial, contended that the Court had jurisdiction to grant relief for the *entire* period of tenancy. This the Court denied under the provisions of the Regulations of the Housing Expediter Section 825.5b which authorizes the Director of the San Francisco Bay Defense Rental Area to adjust rents from and after July, 1947.

IV.

It is therefore apparent that recovery for the overcharge for the period July 1, 1946 to June 30, 1947, must be by suit in the United States District Court. The mere fact that the Regulations of the Housing Expediter Section 825.5b prevented the Director of the San Francisco Bay Defense Rental Area from fixing rents prior to July 1, 1947, did not attempt to prevent the District Court from doing so.

It is also apparent that if the Section 825.5b supra authorized the Director to fix the rent for the period beginning July 1, 1946, the trial Court could have dismissed the complaint in its entirety or granted leave to amend, after the Director had fixed the rent for the entire period of tenancy herein.

Confronted with this dilemma the trial Court wisely sought to grant relief, knowing that unless such relief was granted the appellants would be permitted to profit by their flagrant flaunting of the law.

V.

Bowles v. Nasif, 58 Fed. Supp. 644 at page 645, cited by appellants (Appellants' Brief page 4) has no application to the certain case for the simple reason that the rent Director was then vested with authority to fix the rent for the entire period covered by the alleged overcharge.

The same is true of *Schindler v. Zuberbuehler,* 76 Fed. Supp. 85, at page 86. (Appellants' Brief page 5.)

VI.

Appellee predicates his contention that the trial Court was acting within the law in proceeding to trial and rendering a judgment as it did in *Adler v. Northern Hotel Co.*, 175 Fed. (2d) 619, at page 620.

> "The identical words 'competent jurisdiction' were used in the Emergency Price Control Act, supra, and that phrase in that statute has not been construed as a restriction upon Federal jurisdiction. On the contrary, federal courts have tried the damage claims *without regard to the amount involved.* This the defendants concede, but they say that federal courts are competent to try such actions, not by S. 205 (e) of that Act which provides that such action may be brought 'in any court of competent jurisdiction' but by virtue of S. 205 (c) which provided that 'The district courts shall have jurisdiction * * * concurrently with State and Territorial courts, of all other proceedings * * *' But S. 205 (c) has to be read with S. 205 (e) and when so read, as to jurisdiction, they produce language in effect identical with Section 205 of the Housing and Rent Act." (Emphasis added.)
>
> "When the purposes of Congress are considered and the well known principles of the rules already mentioned are applied, there can be no doubt that the Housing and Rent Act, supra, does contain a grant of general jurisdiction to the Federal courts. See Adams v. Backlund, D.C., 81 F. Supp. 643. To hold otherwise we would have to ignore Section 205, especially the phrase such amount. This we may not do. Market Co. v. Hoff-

man, supra, and the Ex Parte Public Nat. Bank, supra."

Dated, San Francisco, California,
June 12, 1950

Respectfully submitted,
ALLISON E. SCHOFIELD,
RAYMOND L. HANSON,
BRUNSWIG SHOLARS,
SCHOFIELD, HANSON & SHOLARS,
Attorneys for Appellee.

WALTER S. STEVENSON,
THOMAS M. JENKINS,
Of Counsel.